IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.)NO.444 OF 2006
WITH
CIVIL APPLICATION NO.61 OF 2006

Dinoo Dara Daruvala & Anr. ..Appellants.

V/s.

Ms.Pillo D. Broacha & Ors. ..Respondents.

Mr.Sachin Masurkar for appellants.

Mr.S.N.Vaishnawa for Respondents.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 20, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Counsel appearing for the respondents waives notice. Appeal heard forthwith by consent.

4. Ordinarily, there is no reason to interfere with the discretionary order passed with regard to the fixation of royalty amount in respect of the disputed premises, which is stated to be in possession of the defendant as unauthorised occupant. The only way in which equities can be juxtaposed

between the parties, as is agreed before this court by the counsel for the respondents, is to require the appellants to give undertaking to this court that in the event the suit is decreed in favour of the respondents/plaintiffs, the appellants/- defendants would forthwith pay sum at the rate of Rs.6000/- per month as royalty amount alongwith interest on such outstanding amount at the rate of 10% p.a. from the date of the order passed by the receiver i.e. 11th December, 2003 and/or become due from time to time till realisation. Both the appellants are personally present in the court and gave oral assurance to abide by this condition to show indulgence in their favour. That assurance/undertaking is accepted. This indulgence is shown in favour of the appellants in view of the argument canvassed on behalf of the appellants that the only earning member of their family is the defendant No.2 who earns Rs.3,000/- per month.

5. In this backdrop, besides the affidavit of undertaking to be given by the appellants on the above terms, the appellants will have to also furnish solvent surety corresponding to the amount which may become liable to pay at the end of the trial. Only on compliance of this condition, the order passed by

the court receiver fixing royalty amount will not be given effect to. Such undertaking with relevant surety be given within three weeks from today, failing which it will be open to the respondents to proceed against the appellants in accordance with the law on the assumption that this appeal has been dismissed.

6. It is made clear that the court receiver shall not disturb the possession of the appellants for a period of three weeks from today and thereafter, if the appellants comply with the aforesaid conditions. The conditions imposed on the appellants in the above terms are invited by the appellants. In the peculiar facts of this case, it will be in the interest of the parties that the hearing of the suit is expedited. Trial court may be well advised to expedite the hearing of the suit as High Court expedited matter and dispose of preferably by the end of December, 2006.

7. Appeal as well as civil application disposed of accordingly.